

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket No. ER05-185-000

ORDER ACCEPTING THE RECOVERY OF BLACK START SERVICE COSTS

(Issued December 28, 2004)

1. On November 4, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed costs of generating units for providing black start service in the Commonwealth Edison Company (ComEd) zone to be recovered under Schedule 6A of the PJM tariff in lieu of the formula rate specified in the tariff. For the reasons discussed below, we will accept PJM's proposed black start costs. This order benefits customers because it provides for sufficient cost recovery under the PJM tariff, and sends the appropriate market signals to ensure sufficient black start capability for reliable operation of the grid.

Background

2. Prior to the instant filing, ComEd engaged in a systematic effort to identify and competitively procure sufficient black start services in the event of a system-wide blackout. Prior to its integration into PJM, ComEd negotiated arms-length provider agreements with the appropriate black start service providers, and each of those providers sought approval of the reasonableness of the instant rates with the Commission. After a detailed review, the Commission accepted all of the proposed black start rates for filing.²

¹ 16 U.S.C. § 824d (2000).

² See *Midwest Generation, LLC*, Docket Nos. ER03-1187-000 and 001, Letter Order (December 16, 2003); *Constellation Energy Group, Inc.*, Docket Nos. ER04-212-000 and 001, Letter Order (January 29, 2004); *Southeast Chicago Energy Project*, Docket Nos. ER04-333-000 and 001, Letter Order (March 11, 2004); *Reliant Energy Aurora, LP*, Docket No. ER04-662-000, Letter Order (April 30, 2004); and *Duke Energy Lee, LLC*, Docket No. ER04-396-000, Letter Order (July 29, 2004).

3. On May 1, 2004, ComEd turned over operational control of its transmission system to PJM and the system was integrated into PJM's regional markets. Thereafter, PJM, as the transmission provider for the ComEd zone, became responsible for assuring black start capability in that zone.

The Instant Filing

4. Schedule 6A of the PJM tariff sets forth a formula for payments to generators for black start service and the collection of such costs from transmission customers. The annual black start service revenue requirements of each generator are determined pursuant to this formula. The Schedule 6A formula includes allocation factors for fixed and variable generation costs, which are to be used "unless another value is supported by the documentation of costs." PJM tariff First Revised Sheet No. 241. In accepting for filing Schedule 6A, the Commission stated:

The proposed language will permit generators to recover capital investment incurred which may be above the current caps used as allocation factors under the OATT. PJM must file with the Commission under section 205 of the Federal Power Act any deviations from these allocation factors pursuant to 18 C.F.R. §35.13.³

5. PJM states Exelon Corporation (Exelon),⁴ on behalf of its subsidiary, ComEd, properly requested that PJM include certain revenue requirements in Schedule 6A that constitute deviation factors from the allocation factors in Schedule 6A. PJM states that in accordance with the Commission's order in Docket No. ER04-598-000, it is submitting these proposed revenue requirements in accordance with PJM's rules. PJM presented the provider costs at issue here under the alternative, non-formulaic approach. All of the tendered costs which were documented by PJM come directly from the provider rate agreements previously filed with and accepted by the Commission.

6. PJM requests (a) an effective date of May 1, 2004, the date of ComEd's integration into the PJM market, for the requested revenue requirements from three of the generation projects, and (b) an effective date of January 1, 2005, for the requested revenue requirements from three other generation projects.

³ Letter Order, PJM Interconnection, L.L.C., Docket No. ER04-598-000 (April 27, 2004).

⁴ Exelon is a registered holding company that owns ComEd, PECO Energy Company of Philadelphia, and Exelon Generation, LLC.

Notice of Filing, Interventions, Protest, Comments and Answers**A. Public Notice and Intervention**

7. Notice of the filing was published in the *Federal Register* on November 19, 2004, with comments, protests, and interventions due on or before November 26, 2004.⁵ Timely motions to intervene were filed by Exelon; Duke Energy Lee, LLC (Duke Energy); Reliant Energy, Inc. (Reliant); Electric Power Supply Association (EPSA); Midwest Generation, LLC (MWGen); and PJM Industrial Customer Coalition (PJMICC). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene serve to make entities that filed them parties to this proceeding.

8. Exelon, Reliant, EPSA and MWGen filed comments in support of PJM's filing. PJMICC filed a protest to the filing. Exelon and MWGen filed answers to PJMICC's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to accept the answers, as they provide additional information that assists us in the decision-making process.

B. PJMICC's Protest

9. PJMICC argues that PJM's instant filing fails to demonstrate that the proposed black start costs for the ComEd zone are just and reasonable. Therefore, PJMICC requests that the filing be rejected, or in the alternative that the Commission set for hearing the issue of whether recovery of \$9.6 million in black start costs is just and reasonable. PJMICC particularly objects to the rates for black start service charged by MWGen for service from peakers at the Fisk and Waukegan stations. PJMICC maintains that all generating units, including those providing for black start service, should be subject to the Commission's determination with respect to PJM's proposed requirements for retirement and deactivation.⁶

10. PJMICC contends that PJM's filing invokes, on behalf of ComEd, the exception to the Schedule 6A formula rate, but has not "documented" the underlying costs and has not shown that the flow-through of the level of costs in the filing is just and reasonable. PJMICC states that simply adding the costs set forth in each of the various contracts that

⁵ 69 Fed. Reg. 67,716 (November 19, 2004).

⁶ See Docket No. EL03-236-000.

ComEd negotiated for black start service does not demonstrate that such costs are just and reasonable and does not automatically satisfy the requirements of Schedule 6A, much less the FPA.

11. PJMICC offers two main criticisms of the generators' rates. First, PJMICC asserts that the rates are too high (relative to the rates charged by other black start providers in PJM). Second, PJMICC argues that the rates are excessive because they result from restructuring – by which it apparently means the separation of the ownership of generation and transmission. PJMICC states that it is gravely concerned that unbundling and separately pricing each of these generation service components is producing greater revenue streams than the previously bundled service.

C. The Responses

12. In its response, Exelon points out that PJMICC did not intervene in any of the proceedings involving ComEd's provider agreements for black start service. Exelon asserts that because the rates for black start service supplied by the generators in the ComEd zone are already FERC-filed rates, PJMICC should not be allowed to protest PJM's filing in this docket which simply places existing rates under the PJM tariff.

13. With regard to PJMICC's restructuring objection, Exelon asserts that ordering the reintegration of transmission owners and generators would not only be unwise, but beyond the power of the Commission. Exelon states that whether the rates for service provided by independent power producers are higher or lower than those that might be charged by similarly situated generators owned by integrated utilities is simply of no bearing here.

14. Exelon also states that PJMICC's concerns for the level of generator rates relative to rates charged by other PJM generators should also be summarily rejected. Exelon asserts that Schedule 6A, which the Commission accepted and under which PJM filed the instant costs, does not say that only costs that fall below a certain threshold may be recovered. Exelon states that the justification for the rates submitted by PJM in this proceeding was presented by each generator in each of the separate dockets previously noted. Further, Exelon notes that PJMICC declined to challenge the rates in those dockets. Thus, Exelon asserts, they should not be allowed to do so here.

15. Exelon states that the accepted black start rates of the MWGen units are just and reasonable. Exelon states that the black start service rates charged by MWGen for service from peakers at the Fisk and Waukegan stations are simply cost-based rates for units that would otherwise be retired. Further, Exelon states that full cost support for the rates was filed in Docket No. ER03-1187 where the rates were filed as part of a

settlement between ComEd and MWGen, entered into when ComEd was the transmission provider responsible for assuring the provision of system restoration service in its Northern Illinois control area.⁷

16. In its response, MWGen states that the rate schedule under which it provides ComEd with black start service was filed with and accepted by the Commission. MWGen states that it is reasonable and appropriate that the payments for black start service under section 6A of the PJM tariff reflect these agreed-upon, cost-supported, Commission-accepted rate levels. Further, MWGen points out that ComEd is obligated to pay MWGen the agreed-upon rate levels for the provision of black start service, and if the PJM tariff provides for a lower level of compensation to MWGen, then ComEd is responsible for paying MWGen the difference.

Discussion

17. The only issue in this proceeding is whether PJM has complied with its Commission-approved tariff by documenting its black start service costs. The justness and reasonableness of the rates filed by the generators for providing black start service are not at issue here. The generators' rates for that service have been accepted by the Commission and are now the lawful tariff rates for those services.⁸ This filing simply places the existing rates for black start service rates for these generators under the PJM tariff.

18. PJMICC argues that the Commission's prior acceptance of ComEd's bilateral contracts for black start service cannot be relied upon for ratemaking purposes in this filing. PJMICC argues that ComEd erroneously assumes that the Commission's acceptance of these agreements is the equivalent in each case to full Commission approval of the costs of these agreements as just and reasonable for ratemaking purposes. PJMICC quotes language from the letter orders accepting the contracts that states that the

⁷ The settlement agreement was accepted for filing by Letter Order dated December 16, 2003, in Docket Nos. ER03-1187-000 and 001.

⁸ See *Midwest Generation, LLC*, Docket Nos. ER03-1187-000 and 001, Letter Order (December 16, 2003); *Constellation Energy Group, Inc.*, Docket Nos. ER04-212-000 and 001, Letter Order (January 29, 2004); *Southeast Chicago Energy Project*, Docket Nos. ER04-333-000 and 001, Letter Order (March 11, 2004); *Reliant Energy Aurora, LP*, Docket No. ER04-662-000, Letter Order (April 30, 2004); and *Duke Energy Lee, LLC*, Docket No. ER04-396-000, Letter Order (July 29, 2004).

Commission's action does not "constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents...."

19. The Commission's acceptance of the Agreements and the rates therein is binding under the filed rate doctrine.⁹ The quoted language does not alter the fact that the rates accepted for filing are the lawful rates for the service.

20. PJMICC also argues that PJM has failed to document the underlying costs, as required by the tariff,¹⁰ because it has not shown that the flow-through level of rates is just and reasonable. PJMICC states that simply adding the costs set forth in each of the various contracts that ComEd negotiated for black start service does not demonstrate that such costs are just and reasonable and does not automatically satisfy the requirements of Schedule 6A or the FPA.

21. Contrary to PJMICC's suggestion, the tariff's requirement that PJM support its filing by a "documentation of costs" does not mean that PJM must establish the justness and reasonableness of the underlying generator rates which have already been accepted by the Commission. The black start rates proposed here by PJM for cost recovery represent the actual rates for black start service that are in effect. These rates are set forth on Attachments A and B to the October 8, 2004 letter from Exelon to PJM, attached to PJM's submission, that references the accepted service agreements, and this is sufficient documentation of the costs to satisfy the tariff requirement.

22. In any event, PJMICC's argument that the generators' rates are not just and reasonable is based on a comparison of the recovery of black start costs from the ComEd zone to the recovery of PJM's total black start revenue requirement and a comparison PJM's and ComEd's unit costs for black start service. Exelon has explained why some of its black start costs are higher,¹¹ and the mere fact that the rates are different from other

⁹ See, e.g., *Northwest Pipeline Corp.*, 69 FERC ¶ 61,306 at 62,179 n.22 (1994), *reh'g denied*, 70 FERC ¶ 61,243 (1995).

¹⁰ As stated above, Schedule 6A at First Revised Sheet No. 241 of PJM's OATT provides for the use of a formula rate for calculating a generator's annual black start revenue requirement "unless another value is supported by the documentation of costs."

¹¹ Exelon explains that the cost-based rates for the Fisk and Waukegan stations are significantly higher than the rates for other black start units, since these specific units would have otherwise already been retired.

generators does not provide a basis for instituting a section 206 inquiry into the rates. Nor does the integration of ComEd into the PJM system constitute a changed circumstance that warrants a section 206 investigation of the previously accepted rates. Further, PJMICC's concern that unbundling and separately pricing generation service components has resulted in "greater revenue streams" than the previously bundled service is not at issue in this proceeding.

23. We find that PJM's proposal is fully in accordance with Schedule 6A of its tariff. Accordingly, the filing is accepted, as proposed.

The Commission orders:

PJM's proposed recovery of black start service costs are hereby accepted for filing, as discussed in the body of this order, to become effective May 1, 2004 and January 1, 2005, as proposed.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.